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EDITORIAL

The articles in this issue of the *MJLS* have a loose theme of rights and ethics running through them. The first article discusses in detail the ethics of determining liability in tort and employment, with the author concerned that employment status is too easy for an employer to evade. He states that, by not extending employment rights to statutory workers, the Government adopts the employer view that any reform was likely to result in a reduction in temporary work and a lack of permanent work to replace it. However, the author is not convinced by this argument and states that the main unfair dismissal right is only available to those employed for more than a year. He goes on to argue that it is unlikely that many truly temporary contracts need to last for a year or more and, further, that the true answer is not to define minutely each relationship but a more ethical solution would be to consider who can bear the burden of vicarious liability on the one hand and the burden of no employment rights on the other. The key is having the opportunity for profit and the risk of loss.

The second article is a well argued discussion of the various ways the courts have tried to get round the problems left to us by the House of Lords in *Helby v Matthews* and makes out a good case for reform so that the law becomes more concerned with the true economic function of hire-purchase agreements, rather than the form-obsessed state of the law as it is at present. The author argues that our system of law-making only works well if Parliament is prepared to reform the law when the system of rigid precedent prevents the courts from acting. As in this case Parliament has been reluctant to act, that leaves the courts to “fiddle the rules in the interest of justice”. This is an interesting article, the sentiments in which will appeal to many commercial and consumer lawyers.

The third article considers illegality as a defence to negligence in English law and the Law Commission proposals. Although illegality is a general defence in tort law, the author discusses its application to the tort of negligence, noting the two broad approaches to it, that is, the rigid and the flexible, and the limitations on the defence, necessitated by objections to its strict application. The author argues that, although the defence undermines

compensation for the claimant, the appeal of its justification is that claimants should not prevail over the public conscience. The author continues to argue that the current law relating to the defence of illegality in tort has some unsatisfactory features, but it would be inappropriate to replace the defence with contributory negligence or consent and suggests that the defence should be refined to make it more acceptable than it is at the moment.

The fourth article again looks at liability but this time civil liability for animals. In this article the author argues that the common law exposed issues associated with wild and tame animals by establishing the required knowledge to invoke strict liability as well as provoking criticism associated with the suitability of the common law at present. It was hoped that statutory reform would have offered welcome clarification and authority but the legislation retained many of the old common law provisions, including establishing owner knowledge, and, in so doing, has kept some unresolved issues.

Professor Patricia Park
Editor